BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In.the Matter of the Appeal of)
)
PATERSON PACIFIC PARCHMENT COMPANY)

Appearances:

For Appellant: Joseph A. Kiernan, Attorney at Law

For Respondent: A. Ben Jacobson, Associate Tax Counsel

OPINION

This appeal is made pursuant to Section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Paterson Pacific Parchment Company to proposed assessments of additional franchise tax in the amounts of $1,700.00 and $662.89 for the income years 1953 and 1954, respectively.

Appellant is a California corporation located in the San Francisco area, All of its outstanding stock is owned' by Paterson Parchment Paper Company, a corporation located in Bristol, Pennsylvania. The parent corporation manufactures parchment paper which-it sells to Appellant in an unprocessed condition at cost, plus a charge of 50¢ per hundred weight, It "does not sell the unprocessed paper to anyone else. Both corporations process and sell the parchment paper under the same trade name, The parent does most of the advertising of the common products. Appellant also produces a line of paper specialty items, such as napkins and doilies. Approximately 78% of Appellant's sales are of products manufactured initially by the parent corporation.

The two corporations divide the United States into sales areas, Appellant handles all selling in the western states while the parent handles the selling in the rest of the United States. If Appellant receives an order for merchandise which it does not stock but which its parent does, the parent ships the order directly to tha customer but the customer is billed by the Appellant,

Appellant has. a five-man Board of Directors, Four of the five are members of the fifteen-man Board of Directors of Paterson Parchment Paper Company, One of the four men who serve on both Boards of Directors is--also the President of Appellant.

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Appellant filed franchise tax returns on the basis of the separate records it maintained for its own accounting purposes. The Franchise Tax Board found that both corporations were engaged in a unitary business and redetermined Appellant's tax for the years 1951 through 1954 by applying the usual three-factor allocation formula of property, payroll and sales to the combined income of the parent and the subsidiary. This resulted in a determination of overpayments for the years 1951 and 1952 and of deficiencies for the years 1953 and 1954, with the net adjustment for the four years resulting in a credit to the taxpayer of $1,351.52. Despite the net credit, Appellant contests the findings of the Franchise Tax Board.

Appellant has devoted some discussion to the question of the power of the Franchise Tax Board to require consolidated returns and combined reports. The California Supreme Court has made it clear that the Franchise Tax Board has the power to allocate by formula the entire income of corporations engaged in a unitary business (Edison California Stores, Inc. v. McColgan, 30 Cal, 2d 472). Thus the only material question is whether Appellant and its parent are engaged in a unitary business.

As stated by the court in the above-cited case:

> "If the operation of the portion of the business done within the state is dependent upon or contributes to the operation of the business without the state, the operations are unitary; otherwise, if there is no such dependency, the business within the state may be considered separate?

Similarly, the California Supreme Court stated in Butler Brothers v. McColgan, 17 Cal. 2d 664, 668, affd. 315 U.S. 501:

> "If there is any evidence to sustain a finding that the operations of appellant in California... contributed to the net income derived from its entire operations in the United States, then the entire business of appellant is so clearly unitary as to require a fair system of apportionment by the formula method in order to prevent overtaxation to the corporation or undertaxation by the state."

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A major consideration which led to the finding of a unitary business in both of those cases was the fact that merchandise was centrally purchased and then sold by the various branches of the business. The same principle is involved where one portion of the business manufactures goods and the entire business is engaged in selling them. It is pointed out in Altman & Keesling, Allocation of Income in State Taxation, 2d ed., at page 101, that "... the business of manufacturing goods in one state and selling them in other states is clearly unitary;" (See, also, Appeals of Eljer Company and Eljer Company of California, decided by this Board on December 16, 1958.)

In our opinion, the manufacturing and selling operation here present, marked by the use of a common trade name and common advertising, the division of the country into exclusive selling areas and the cooperation of the parent in servicing Appellant's customers, compels a finding that the corporations are engaged in a unitary business.

O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of Paterson Pacific Parchment Company to proposed assessments of additional franchise tax in the amounts of $1,700.00 and $662.89 for the income years 1953 and 1954, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 16th dav of December, 1959, by the State Board of Equalization.

Paul R. Leake, Chairman

George R. Reilly, Member

John W. Lynch, Member

Richard Nevins, Member

________________, Member

ATTEST: Dixwell L. Pierce, Secretary